

# VIRGINIA BOARD OF OPTOMETRY NEWS FOCUS



Fall 2005

## President's Message

*Safe, effective, and legal practice depends not only upon licensees remaining clinically current but also upon their keeping abreast of the governing statutes and regulations. The Board provides periodic newsletters and other correspondence and maintains a continuously updated website to assist with this. However, just like licensed drivers who must know and obey traffic laws, the individual optometrist bears the responsibility for remaining up-to-date on the laws and regulations that affect his license to practice. So, take the time to review this newsletter and to check out the Board's website periodically and whenever questions arise.*

[Virginia Board of Optometry - Home Page](http://www.dhp.virginia.gov/optometry/default.htm) ( <http://www.dhp.virginia.gov/optometry/default.htm>)

*Please note that Board office's staff is available to direct inquirers to the statutes, regulations, and guidance documents, and answer general questions, but no one there can offer legal advice or recommend what you should do in a particular situation. However, the vast majority of questions can be easily answered for yourself by referring directly to the information on the website. It is updated continually throughout the year. It has the latest version of the statutes, regulations, and guidance documents, and there is an extensive "Frequently Asked Questions" page. Readily available for review and downloading are application instructions and forms, Board contact information and meeting calendar, disciplinary records, previous newsletters, and a host of other information and links to related sites. Please get in the habit of using this valuable resource.*

*Also, in keeping with the general admonition to "remain current," the Board wishes to bring to the reader's attention the following matters of concern, with articles on each topic:*

- Continuing education compliance,
- Professional designations,
- Changes to the format for drug prescription form,
- Guidance on drug prescribing,
- Patient notification of a sale, relocation, or closing of a practice, and
- Amendments to §54.1-3205 going into effect December 31, 2005.

*They are addressed in some detail to better educate everyone on them and to hopefully avoid future disciplinary problems. I encourage every licensed optometrist to continue to strive for excellence in patient care and adherence to the law. This can only benefit our patients, ourselves, and ultimately all Virginians.*

Sincerely yours,

*David H. Hettler, O.D.*

## Members of the Board

<b>David H. Hettler, OD President</b> Oakton First term expires 6/30/2006	<b>Paula H. Boone, O.D. Vice President</b> Portsmouth Second term expires 6/30/2009	<b>William T. Tillar, O.D. Secretary</b> Emporia First term expires 6/30/2007	<b>Gregory P. Jellenek, O.D.</b> Chesapeake, VA First term expires 6/30/2008	<b>W. Ernest Schlabach, O.D.</b> Harrisonburg, VA First term expires 6/30/2008	<b>Jacquelyn S. Thomas</b> Citizen Member Unexpired term expires 6/30/2007
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## **Continuing Education Compliance**

*Gregory Jellenek, O.D.*

Each year the Board monitors compliance with the continuing education requirements for licensure renewal. As we draw to the end of another year, you may be wondering how doctors are chosen for a continuing education (CE) audit. A random selection is made by computer of all licensees and a separate draw is made of the licenses of those disciplined for any violation.

Last year's audit results revealed a dismal showing as approximately 25% of those audited were not in compliance. This is especially troubling as our state is fairly liberal as to the quantity and methods allowed to obtain CE. We only require 16 hours per year, and we do not place a limit on the number of hours that may be obtained via the Internet or through journals.

There were two general categories of offenders, some failed to get the right mix of CE topic areas, while others were blatantly deficient in the quantity needed. To avoid the first problem, all licensees should review Section 18 VAC 105-20-70, of the Regulations, entitled, "Requirements for continuing education," posted on the Board's website (*see previous page for web link*). To avoid the latter, remember that sixteen (16) hours of CE are required each calendar year.

For it to count, all CE must be in accordance with the requirements specified in the regulations. For example, certificates must have the date, title, presenter, approval number, and doctor's name. CE cannot be designed to promote one particular product nor for practice management (income

enhancement). Be sure if you are Therapeutic Pharmaceutical Agents (TPA) certified that at least two hours are specific to the use of pharmaceutical agents. Do not forget that cardiopulmonary resuscitation (CPR) and patient recordkeeping are good for two hours each.

Remember, just the luck of the draw is all it takes to be audited. Also, note that this year, the Board voted to increase penalties for CE violations, with automatic re-auditing for three years following findings of violation, and for repeat offenders, fines of \$300 for the first hour and \$200 per hour for each subsequent hour.

For those unable to get their entire CE within the year, due to health or other reasons provided in the regulations, a request to the board for an extension or exemption may be made. Those requests should be filed with the Board office before December 31.

As one can see, it is important to keep current with CE. It avoids needless disciplinary problems, and it helps to ensure that licensees are informed on the latest trends, which is good for the patients and the profession.

## **Professional Designations**

*Ernest Schlabach, O.D.*

This year, the Board has had a number of questions and complaints arise relating to the requirements for professional designations. The best guidance that can be provided is to carefully read Regulation **§18 VAC 105-20-50**. Also, for a listing of existing Professional Designations registered, you may check "License Lookup" on the Board's website by selecting "Professional Designation." You must practice either under your own name or a Professional Designation.

## Drug Prescription Pad Format Changes to Take Effect July 1, 2006

Please note that there were changes to the Virginia *Drug Control Act* relating to pharmaceutical prescription blank formats passed in the 2003 General Assembly which will take effect beginning July 1, 2006. Amendments which pertain to optometric pharmaceutical prescribing are the deletion of *Code of Virginia* §54.1-3408.01 (B) and the addition of §54.1-32408.03. For your reference, the full text is provided below.

### § 54.1-3408.01. Requirements for prescriptions.

~~B. Pursuant to § 32.1-87, any prescription form shall include two boxes, one labeled "Voluntary Formulary Permitted" and the other labeled "Dispense As Written." A prescriber may indicate his permission for the dispensing of a drug product included in the Formulary upon signing a prescription form and marking the box labeled "Voluntary Formulary Permitted." A Voluntary Formulary product shall be dispensed if the prescriber fails to indicate his preference. If no Voluntary Formulary product is immediately available or if the patient objects to the dispensing of a generic drug, the pharmacist may dispense a brand name drug. Printed prescription forms shall provide:~~

~~"[ ] Dispense As Written  
[ ] Voluntary Formulary Permitted  
.....  
Signature of prescriber~~

~~If neither box is marked, a Voluntary Formulary product must be dispensed."~~

### § 54.1-3408.03. Dispensing of therapeutically equivalent drug product permitted.

A. A pharmacist may dispense a therapeutically equivalent drug product for a prescription that is written for a brand-name drug product unless (i) the prescriber indicates such substitution is not authorized by specifying on the prescription, "brand medically necessary" or (ii) the patient insists on the dispensing of the brand-name drug product.

In the case of an oral prescription, the prescriber's oral dispensing instructions regarding substitution shall be followed.

B. Prescribers using prescription blanks printed in compliance with Virginia law in effect on June 30, 2003, having two check boxes and referencing the Virginia Voluntary Formulary, may indicate, **until July 1, 2006** [emphasis added], that substitution is not authorized by checking the "Dispense as Written" box. If the "Voluntary Formulary Permitted" box is checked on such prescription blanks or if neither box is checked, a pharmacist may dispense a therapeutically equivalent drug product pursuant to such prescriptions.

## Board Guidance on Prescribing

Also concerning the topic of pharmaceutical prescribing, the Board developed the following guidance document for optometrists pertaining to prescribing for oneself or family members. This mirrors similar guidance offered by other health regulatory boards for their licensees with prescriptive authority. The full text begins below and continues on page 4.

### **PRESCRIBING FOR SELF AND FAMILY PRACTITIONER/PATIENT RELATIONSHIP**

#### **Reference:**

§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.

A. A prescription for a controlled substance may be issued only by a practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled substances, or by a licensed nurse practitioner pursuant to § [54.1-2957.01](#), a licensed physician

assistant pursuant to § [54.1-2952.1](#), or a TPA-certified optometrist pursuant to Article 5 (§ [54.1-3222](#) et seq.) of Chapter 32 of this title. The prescription shall be issued for a medicinal or therapeutic purpose and may be issued only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship.

For purposes of this section, a bona fide practitioner-patient-pharmacist relationship is one in which a practitioner prescribes, and a pharmacist dispenses, controlled substances in good faith to his patient for a medicinal or therapeutic purpose within the course of his professional practice. In addition, a bona fide practitioner-patient relationship means that the practitioner shall (i) ensure that a medical or drug history is obtained; (ii) provide information to the patient about the benefits and risks of the drug being prescribed; (iii) perform or have performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; except for medical emergencies, the examination of the patient shall have been performed by the practitioner himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription; and (iv) initiate additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects. Any practitioner who prescribes any controlled substance with the knowledge that the controlled substance will be used otherwise than medicinally or for therapeutic purposes shall be subject to the criminal penalties provided in § [18.2-248](#) for violations of the provisions of law relating to the distribution or possession of controlled substances.

**Guidance:**

**Documentation**

The presence of a record is an essential part of a valid practitioner/patient relationship. The record should contain the following:

1. An appropriate history and physical examination (if pain is present and controlled substances prescribed, the assessment of pain, substance abuse history, and co-existing diseases or conditions should be recorded).
2. Diagnostic tests when indicated.
3. A working diagnosis.
4. Treatment plan.
5. Documentation by date of all prescriptions written to include name of medication, strength, dosage, quantity and number of refills. The prescription should be in the format required by law.

**Self-Treatment and Prescribing**

1. A practitioner cannot have a bona fide practitioner/patient relationship with himself or herself.
2. Only in an emergency should a practitioner prescribe for himself or herself schedule VI drugs.
3. Prescribing of schedule II, III, IV, or V drugs to himself or herself is prohibited.

**Immediate Family**

1. Appropriate consultation should be obtained for the management of major or extended periods of illness.
2. No schedule II, III or IV controlled substances should be dispensed or prescribed except in emergency situations.
3. Records should be maintained of all written prescriptions or administration of any drugs.

<b>Board Meeting Calendar</b>	
NOVEMBER 1, 2005	INFORMAL CONFERENCE HEARINGS
DECEMBER 9, 2005	BOARD MEETING/ HEARING(S)
FEBRUARY 7, 2006	BOARD MEETING/HEARING(S)
MAY 10, 2006	BOARD MEETING/HEARING(S)
AUGUST 3, 2006	BOARD MEETING/HEARING(S) TPA FORMULARY CTE
NOVEMBER 17, 2006	BOARD MEETING/HEARING(S)

***For the latest updates on meetings,  
minutes, and regulatory reviews, go to  
[The Virginia Regulatory Town Hall](http://www.townhall.virginia.gov)  
(<http://www.townhall.virginia.gov>.)***

## Notifying Patients When You Leave

*Ernest Schlabach, O.D.*

An issue of great concern is the failure of some optometrists to notify patients when they move or close down a practice. Not only is the patient frustrated by the inconvenience of not knowing where his optometrist is, it jeopardizes his continuity of eye care. Regulation §18 VAC-20-40(5) specifically holds it as unprofessional conduct for an optometrist to fail to notify patients of the sale, relocation or closing of a practice.

In addition, *Code of Virginia* §54.1-2405 requires patient notification by all regulated health professionals as follows:

**§ 54.1-2405. Transfer of patient records in conjunction with closure, sale, or relocation of practice; notice required.**

A. No person licensed, registered, or certified by one of the health regulatory boards under the Department shall transfer records pertaining to a current patient in conjunction with the closure, sale or relocation of a professional practice until such person has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the provider's practice area, as specified in § 8.01-324.

The notice shall specify that, at the written request of the patient or an authorized representative, the records or copies will be sent, within a reasonable time, to any other like-regulated provider of the patient's choice or provided to the patient pursuant to § 32.1-127.1:03. The notice shall also disclose whether any charges will be billed by the provider for supplying the patient or the provider chosen by the patient with the originals or copies of the patient's records. Such charges shall not exceed the actual costs of copying and mailing or delivering the records.

B. For the purposes of this section:

"Current patient" means a patient who has had a patient encounter with the provider or his professional practice during the two-year period immediately preceding the date of the record transfer.

"Relocation of a professional practice" means the moving of a practice located in Virginia from the location at which the records are stored at the time of the notice to another practice site that is located more than 30 miles away or to another practice site that is located in another state or the District of Columbia.

## Statistics

### Licensure

As of October 11, the number of Virginia licensed optometrists with Therapeutic Pharmaceutical Agents (TPA) certification is at an all-time high. Fewer than 100 licensees with Virginia addresses lack TPA competency. There are 140 Professional Designations registered, also.

License Type	Address	Count
TPA Optometrist	In Virginia	852
TPA Optometrist	Out-of-state	279
<b>TPA Optometrist TOTAL</b>		<b>1,131</b>
Non TPA Optometrist	In Virginia	87
Non TPA Optometrist	Out-of-state	194
<b>Non TPA Optometrist TOTAL</b>		<b>281</b>
<b>GRAND TOTAL</b>		<b>1,412</b>

### Discipline

From FY 2003 to FY 2005, the Board adjudicated almost 127 cases, with 20% with findings of violation. A breakdown by year of total number of cases is provided. Total number of violation cases are in parenthesis:

FY	Cases
<b>2003</b>	51 (12)
<b>2004</b>	47 (2)
<b>2005</b>	29 (4)
<b>GRAND TOTAL</b>	<b>127 (36)</b>

## Disciplinary Cases

The following cases involved findings of violation. The fiscal year falls from July 1 to the following June 30). General case categories are provided. Details are provided in the actual orders and notices which may be obtained from the Board website or from the Board office at 804-662-9910.

### FY 2003

- Christine E. Bae, O.D., Unlicensed Activity
- Samuel R. Baylus, O.D., - two cases - Business Practice Issues/Unprofessional Conduct & Board Order Compliance
- Benjamin J. Beahm, O.D., Standards of Care
- Joel Burstein, O.D., Cont. Education
- Harry L. Clayman, O.D. Standards of Care
- Hallie J. Davis, O.D., Cont. Education
- Shari F. Graber, O.D., Drug Related
- Eugene B. Haden, O.D., Cont. Education
- Donald B. Kelly, O.D., Business Practice Issues
- George A. Stephenson, O.D., Standards of Care
- John S. Toman, O.D., Cont. Education

### FY 2004

- Allan G. Dosik, O.D., Fraud
- Arthur M. Moody, O.D., Board Order Compliance

### FY 2005

- John M. Bickerton, O.D., Drug Related
- Arthur M. Moody, O.D., Standards of Care
- Nickey L. Neagle, O.D., Business Practice Issues
- Sidney H. Slavin, O.D., Business Practice Issues

**For details concerning Board disciplinary actions pertaining to the licensees listed as well as all Board of Optometry licensees, go to "License Lookup" on the Board's website:**

**[Virginia Board of Optometry - Home Page.](http://www.dhp.virginia.gov/optometry/default.htm)**  
(<http://www.dhp.virginia.gov/optometry/default.htm>)

**It provides a link to actual downloadable copies of all notices and orders. In addition, this site provides the Board's publicly available information on licensure status, and initial licensure and expiration dates.**

### Further Contact Information

Virginia Board of Optometry  
6603 West Broad Street, 5th Floor  
Richmond, VA 2323-1712  
804-662-9910

(804) 662-7197 (TDD)

804-662-7098 (fax)

E-mail: [optbd@dhp.virginia.gov](mailto:optbd@dhp.virginia.gov)

*Staff:*

Elizabeth A. Carter, Ph.D., Executive Director  
Carol Stamey, Administrative Assistant

## **New Mercantile Practice Statute to take Effect on December 31, 2005**

As a final note on staying abreast of new statutes, the long-standing prohibition against practice in a commercial or mercantile practice was amended by the 2005 General Assembly to define "practicing in a commercial or mercantile establishment" in a manner that relates to physical access. Provided for your reference is Section 54.1-3205 of the *Code of Virginia* with the new amendment in italics. Please review it carefully as it becomes enforceable at the end of the year.

### **§ 54.1-3205. Practicing in a commercial or mercantile establishment.**

A. It shall be unlawful for any optometrist to practice his profession as a lessee of or in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice optometry as a lessee of or in the commercial or mercantile establishment.

B. No licensed optometrist shall practice optometry as an employee, directly or indirectly, of a commercial or mercantile establishment, unless such commercial or mercantile establishment was employing a full-time licensed optometrist in its established place of business on June 21, 1938.

C. For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities.

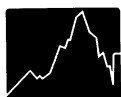
*D. For the purposes of this section, an optometrist shall be deemed to be practicing in a commercial or mercantile establishment if he practices, whether directly or indirectly, as an officer, employee, lessee or agent of any person or entity in any location that provides direct access to or from a commercial or mercantile establishment. Direct access includes any entrance or exit, except an entrance or exit closed to the public and used solely for emergency egress pursuant to applicable state and local building and fire safety codes, that prohibits a person from exiting the building or structure occupied by such practice or establishment (i) onto an exterior sidewalk or public way or (ii) into a common area that is not under the control of either the optometry practice or the commercial or mercantile establishment, such as into the common areas of an enclosed shopping mall. For the purposes of this section, neither an optometric practice nor an ophthalmologic practice which sells eyeglasses or contact lenses ancillary to its practice shall be deemed a commercial or mercantile establishment. Further, any entity that is engaged in the sale of eyeglasses or contact lenses, the majority of the beneficial ownership of which is owned by an ophthalmologic practice and/or one or more ophthalmologists, shall not be deemed a commercial or mercantile establishment.*

~~D~~ E. This section shall not be construed to prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them.

2. That the provisions of this act shall become effective on December 31, 2005.

**Virginia Board of Optometry**  
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